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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------------|------------------------|
| 10/522,493 | 01/26/2005 | Katja Fichtenau | F7661(V) | 1660 |
| 201 7590 10/17/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100 | | | EXAMINER TRAN LIEN, THUY | |
| | | | ART UNIT 1794 | PAPER NUMBER |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/522,493

Applicant(s)

FICHTENAU, KATJA

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Line 13 is vague and indefinite because it is not known what the " they" refers to. Are the pieces or strands sterilized after they are placed in the container or is the container sterilized before the placing of the pieces or strands or both?

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meyer et al (6187357) in view of Bajracharya et al (6001405) and Hauser et al (5211977).

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Meyer et al disclose a process for making extended shelf life pasta. The process comprises the steps of forming a dough, forming the dough into pieces or strands, cooking the pieces or strands, packaging the pieces or strands and pasteurizing the pieces or strands. The dough comprises 60-75% cereal matter, 0-3% polysaccharides such as calcium alginate and 25-40% water. Optional ingredients include protein, salt, coloring agent, baking powder and flavoring agent. The cereal matter includes cereal flour, durum, hard wheat semolina, soft wheat flour or semolina. The pasta includes products such as spaghetti, fettuccine, angel hair, linguine and similar products. The blanching is done by steaming or by steaming and hot water-spraying. (see col. 1 line 50 through col. 2 line 65, col. 4 lines 16-23, col. 5, col. 6 lines 62-65)

With respect to the process claims, Meyer et al do not disclose the step of treating the strands or pieces with calcium chloride solution for .2-2 hours, cooking by boiling. With respect to both the product and process, Meyer et al do not disclose sterilizing.

Hauser et al disclose a process of making flavoured pasta comprising alginate. They teach to treat the pasta in aqueous calcium solution to form a network between the alginate and the calcium. This network strengthens the cohesion of the pastas and ensures the stability during subsequent cooking. (see col. 2 lines 27-35)

Bajracharya et al disclose a process of preparing shelf-stable pastas. They teach pasta can be pasteurized or sterilized at higher temperature for shorter processing time. (see col. 1 lines 18-21, col. 3 lines 38-49)

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Since the pasta disclosed by Meyer et al contains alginate, it would have been obvious to one skilled in the art to subject the pasta to the calcium chloride treating step taught by Hauser et al to obtain the benefit taught by Hauser et al. It would have been within the skill of one in the art to determine the strength and time of treatment depending on the strength of the network wanted. This is a result-effective variable which can be determined through routine experimentation. It would also have been obvious to cook by boiling because it is a well-known alternative to steaming. It would have been obvious to follow the guideline of cooking time as in steaming and also on the degree of cook wanted. It would also have been obvious to one skilled in the art to sterilize or pasteurize the product because both are well-known alternative processing step for pasta as shown by Bajracharya et al. It would have been obvious to select one or the other depending on the time and temperature of processing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

October 12, 2007


LIEN TRAN
PRIMARY EXAMINER
